

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GARLAND ROY ROYALL,

Defendant-Appellant.

UNPUBLISHED

January 26, 2012

No. 301481

Wayne Circuit Court

LC No. 10-001337-FC

Before: GLEICHER, P.J., and CAVANAGH and O'CONNELL, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions on three counts of first-degree murder, MCL 750.316(1)(a), and one count of assault with intent to commit murder, MCL 750.83. We affirm.

On December 28, 2009, at a house on Novara Street in Detroit, Demetrius Few, Curtis Charles, and Shaytona Daniels died of multiple gunshot wounds and Nua Berishaj was shot nine times, but eventually recovered from life-threatening injuries. The prosecution's theory of the case was that defendant acted both as a principal and/or as an aider and abettor in the shootings.

Defendant first contends that there was insufficient evidence to convict him of three counts of murder and one count of assault with intent to murder because there was no evidence that he knew his accomplices intended to kill the victims. We disagree. This Court reviews a challenge to the sufficiency of the evidence de novo, viewing the evidence in the light most favorable to the prosecution to determine whether it was sufficient for a rational trier of fact to find that the elements of the offenses were proven beyond a reasonable doubt. *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006).

A conviction of first-degree premeditated murder requires evidence that the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate. MCL 750.316(1)(a); *People v Taylor*, 275 Mich App 177, 179; 737 NW2d 790 (2007). To prove assault with intent to murder, the prosecution must establish that the defendant committed: "(1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder." *People v Barclay*, 208 Mich App 670, 674; 528 NW2d 842 (1995).

The jury acquitted defendant on a count of possession of a firearm during the commission of a felony. Therefore, defendant argues, the jury did not believe that defendant was acting as a

principal in the shootings, but rather as an aider and abettor. For conviction under an aiding and abetting theory, the prosecution must prove that:

(1) the crime charged was committed by the defendant or some other person; (2) the defendant performed acts or gave encouragement that assisted the commission of the crime; and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time that [the defendant] gave aid and encouragement. [*Robinson*, 475 Mich at 6 (citation omitted).]

“Because it is difficult to prove an actor’s state of mind, only minimal circumstantial evidence is required.” *People v McGhee*, 268 Mich App 600, 623; 709 NW2d 595 (2005).

There was sufficient evidence for the jury to find, at a minimum, that defendant participated in the offenses knowing that his two accomplices possessed a premeditated intent to kill the decedents and Berishaj. It was the prosecution’s theory of the case, and the evidence established, that defendant engaged in negotiations with Few as a ploy to get a large quantity of marijuana available to then be stolen by defendant and his accomplices. It was also the prosecution’s theory that part of the plan included killing all of the witnesses and potential retaliators.

According to Berishaj’s testimony, defendant initially went through the motions of the drug deal with Few. During this time, defendant maintained constant communications with others, through text messaging on his cell phone and a visit to a home on Bedford. Defendant insisted that he drive separately from Few and Berishaj, and he went into the Bedford home alone, presumably to have the privacy needed to continue preparations. When defendant represented to Few that his potential buyers were delayed, Few indicated that he was leaving with his 50 pounds of marijuana and returning it to the supplier. Unwilling to abandon the plan, defendant followed Few back to the Novara house to maintain close proximity to the large quantity of marijuana. There, defendant was again seen repeatedly texting from his phone. From this evidence, the jury could infer that he was continuing preparations.

Berishaj further testified that defendant appeared “paranoid” and particularly “jumpy” when Few attempted to look out the window. Then, out of the blue, defendant indicated that his “nephew” was outside and needed to use the bathroom. Defendant let two men into the house who were unknown to Berishaj. Under this guise, defendant facilitated his two accomplices’ entry into the house. Defendant then followed his “nephew” into the bathroom where he appeared to be handing the man something or pushing something toward him. As defendant backed out of the bathroom, he was heard to say to the bathroom’s occupant, “don’t forget to spray.” This double entendre was likely the signal that everything was set to go. Then, a minute or two passed, during which time Berishaj did not hear a toilet flush or a door open. Suddenly, defendant’s “nephew” exited the bathroom, spraying bullets from an automatic handgun into the kitchen. Berishaj testified that defendant and his two accomplices all had guns and were all shooting at the occupants of the house. The police evidence technician testified that casings or bullets from both .45-caliber and .40-caliber automatic weapons were found in the house’s kitchen around the bodies of the two male decedents. The forensic lab’s firearms tool examiner, who examined the bullets and casings found in the Novara house and removed from the

decedents' bodies, gave his expert opinion that more than two guns, and as many as four guns, were fired.

Berishaj also testified that, after the shooting rampage, he heard noises in the vicinity of his van where the marijuana was stored. When the police arrived, damage to the van was documented and no marijuana was recovered. From this evidence, the jury could conclude that killing the occupants of the house was part of a carefully conceived plan to steal a large quantity of marijuana, a plan in which defendant fully participated and was probably the leader. Accordingly, there was sufficient evidence to support defendant's conviction on three counts of first-degree murder and one count of assault with intent to murder.

Next defendant argues that, because the evidence did not support the inference that he fled to avoid detection or because of consciousness of guilt, it was error for the trial court to give the standard jury instruction on flight. We disagree. To give a particular instruction to the jury, there must be evidence to support it. *People v Johnson*, 171 Mich App 801, 804; 430 NW2d 828 (1988). In *People v Compeau*, 244 Mich App 595, 598; 625 NW2d 120 (2001), this Court noted that it is "well established that evidence of flight is admissible to show consciousness of guilt." The term "flight" encompasses fleeing the scene of the crime, leaving the jurisdiction, running from the police, resisting arrest, and attempting to escape custody. *People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995).

Here, there was evidence that defendant sped away from the scene of the crime. When doing so, he was in a rental car of a different make and model than what he usually drove. He took with him the two accomplices that defendant admits, at the least, participated in the shootings. This evidence supports a conclusion that defendant fled the scene of the crime to avoid capture by the police. Because the flight instruction was warranted and properly given, defendant has failed to show that the lower court erred.

Finally, defendant contends that the trial court abused its discretion in deviating from the sentencing guidelines with regard to his assault with intent to murder conviction. We disagree. A trial court's decision to depart from the sentencing guidelines is reviewed for an abuse of discretion. *People v Smith*, 482 Mich 292, 300; 754 NW2d 284 (2008). An abuse of discretion occurs when a trial court chooses a minimum sentence that is outside the range of reasonable and principled outcomes. *Id.*

Defendant received mandatory life without parole sentences for the three convictions of first-degree murder. With respect to the assault with intent to murder conviction, the sentencing guidelines minimum range was 171 to 285 months' imprisonment. The court exceeded the guidelines for the assault conviction, sentencing defendant to 40 to 60 years' imprisonment. MCL 769.34(2) provides that a trial court must impose a minimum sentence within the sentencing guidelines range unless a departure from the guidelines is permitted. The trial court may depart from the sentencing guidelines if it has substantial and compelling reasons to do so, and it states the reasons on the record. *People v Abramski*, 257 Mich App 71, 74; 665 NW2d 501 (2003). A trial court may not base its departure on an offense characteristic that was already taken into account in calculating the appropriate guidelines range unless it finds that the characteristic has been given inadequate or disproportionate weight. MCL 769.34(3)(a) and (b); *Abramski*, 257 Mich App at 74. In *People v Babcock*, 469 Mich 247, 257-258; 666 NW2d 231

(2003), the Supreme Court recognized that substantial and compelling reasons for departure exist only in exceptional cases. Further, the trial court's reasons for departing from the guidelines range must be objective and verifiable. *Abramski*, 257 Mich App at 74. To be verifiable, "the facts to be considered by the court must be actions or occurrences that are external to the minds of the judge, defendant, and others involved in making the decision, and must be capable of being confirmed." *Id.*

At the time of sentencing, the court articulated its reasons for departing from the statutory guidelines, noting the magnitude of defendant's conduct, which took on the nature of a mass murder or massacre. The court also noted that the defendant was motivated by greed and the desire to eliminate witnesses, that he was "the maestro" or "the ring leader" of three cold-blooded executions, and that there would have been a fourth murder victim if not for "the extraordinary work" of medical personnel. The court found that the guidelines for assault with intent to murder "do not take into account this type of mass murder." The trial court clearly considered the offense variable of the guidelines insufficient to account for the horrific circumstances presented in this case. Because the trial court's minimum sentence did not fall outside the range of reasonable and principled outcomes, the trial court did not abuse its discretion by imposing a sentence that was above the guidelines recommended range.

Affirmed.

/s/ Elizabeth L. Gleicher

/s/ Mark J. Cavanagh

/s/ Peter D. O'Connell